IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF IDAHO

IN RE	)	
	)	**Case No. 96-40369**
NANOTEK, INC.,	)	
	)	
Debtor.	)	
_____	)	
	)	
L.D. FITZGERALD, Trustee,	)	
	)	
Plaintiff,	)	**Adv. No. 98-6136**
	)	
vs.	)	**MEMORANDUM OF DECISION RE DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT**
	)	
NANOTEK COMPUTER CORP., an Idaho corporation; RONALD and DOROTHY WALKER, husband and wife; ALLEN BALL, Trustee of the ALLEN BALL and CONNIE BALL LIVING TRUST; ALLEN BALL, individually; JAMES A. HANEY, M.D., P.C. PENSION PLAN; JAMES A. HANEY, individually; JOSEPH D. GEORGE and BARBARA GEORGE, husband and wife; and JOSEPH C. GEORGE and CAROL GEORGE, husband and wife,	)	
	)	
Defendants.	)	
_____	)	

Craig W. Christensen, Pocatello, Idaho, for Plaintiff

Alan C. Stephens, THOMSEN AND STEPHENS, Idaho Falls, Idaho for Defendants Nanotek Computer Corp. and Joseph D. and Barbara George.

Ronald S. George, Pocatello, Idaho, for Defendants Joseph C. and Carol George.

I. Background

This action was commenced on May 26, 1998, by the Chapter 7 trustee to avoid a variety of alleged transfers of assets to several insiders of the Debtor Nanotek, Inc. ("Debtor"). Before the Court for disposition are the Motion for Summary Judgment filed by Defendants Joseph C. and Carol George (the C. Georges) (Docket No. 44 in this adversary proceeding), and the Motion for Summary Judgment filed by Defendants Joseph D. and Barbara George (the D. Georges), and Nanotek Computer Corporation ("Nanotek") (Docket No. 15 of District Court Case No. CV-99-00474-E-BLW). Also before the Court is a motion by the C. Georges to strike the affidavit of Brian Taylor (Docket No. 9 of District Court Case No. CV-99-00474-E-BLW). Plaintiff L.D. Fitzgerald, Chapter 7 trustee of the bankruptcy estate of Nanotek, Inc. ("Trustee"), objects to all the

motions. A hearing on the motions was held on June 13, 2000, after which the issues were taken under advisement.[1]

II. Facts

The following facts appear undisputed.

On August 5, 1985, Nanotek, Inc., ("Debtor") filed its Articles of Incorporation and was authorized to conduct business within the State of Idaho. Debtor's business consisted of engineering and building high-performance computer hardware for both governmental entities and large businesses. Joseph D. George, the son of the C. Georges, served as Debtor's president,

[1] It is an understatement to observe that this adversary proceeding has a complicated procedural history. After the action was initiated in this Court, the Defendants requested a jury trial. Pursuant to 28 U.S.C. § 157(a), the Court solicited the consent of the parties that this bankruptcy judge conduct the jury trial. Defendants would not consent. Therefore, this bankruptcy judge recommended that reference of the action be withdrawn by the District Court. Doing so, the District Court then opened a new district court file for the action, assigning it Case Number CV-99-00474-E-BLW. The district judge then assigned it to a magistrate judge. The parties filed and argued various motions before the magistrate judge, including the Motions for Summary Judgment considered here. After the oral argument before the magistrate judge, but prior to issuance of a decision, the Defendants reconsidered and indicated they would consent to a jury trial in the Bankruptcy Court. Given this development, on April 13, 2000, the District Court referred the action back to the Bankruptcy Court. Aside from inherent difficulties occasioned by the extended delay resulting by this course, the briefs and supporting materials concerning the present motions now span two different case files, both of which must be considered in rendering the Court's opinion here.

although it is unclear from the record who Debtor's stockholders were.[2] Debtor's physical place of business was located at 3890 Sunnyside Road, Idaho Falls, Idaho.

On December 6, 1991, Debtor borrowed $215,000 from Bank of Eastern Idaho ("Bank"), which loan was secured by all of Debtor's inventory and equipment. This loan was personally guaranteed by the C. Georges. In addition, as additional security for the loan, the C. Georges assigned their interest in several deeds of trust to Bank. Exhibit 13 of Trustee's Supplemental Record.

Between 1992 and 1995, the C. Georges also made various loans to Debtor. These debts are listed as unsecured on Debtor's bankruptcy schedules in the amount of $495,000.

Brian Taylor ("Taylor") was Debtor's Chief Financial Officer and Vice-President. While the parties do not agree on the exact date, at least by April 14, 1995, Taylor's employment with Debtor was terminated. *See* Affidavit of Brian Taylor, dated October 6, 1999; Affidavit of Joseph D. George, dated January 21, 2000.

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[2] It is alleged in Trustee's Affidavit that C. Georges were *not* shareholders of Debtor, Nanotek, Inc.

On April 19, 1995, Debtor signed a promissory note in the amount of $480,000 in favor of Allen Ball, as Trustee of the Allen Ball and Connie Ball Living Trust ("Ball Trust"). A loan agreement of the same date recites that the $480,000 was lent contemporaneously with execution of the documents. Exhibit 25 of Trustee's Supplemental Record. Debtor executed a security agreement in favor of the Ball Trust the same day. Exhibit 28 of Trustee's Supplemental Record. A UCC-1 financing statement was filed with the Idaho Secretary of State on April 24, 1995, indicating the promissory note was secured by all of Debtor's assets, including all equipment, inventory, accounts and accounts receivable. Exhibit 29 of Trustee's Supplemental Record. In addition to the security agreement, the D. Georges pledged their 93,044 shares of stock in Debtor to the Ball Trust to further secure this loan. Exhibit 26 of Trustee's Supplemental Record.

On June 6, 1995, a new corporation was formed called Nanotek Computer Corporation. The C. Georges were the sole shareholders. On November 9, 1995, the C. Georges and Nanotek entered into a "Buy Sell Agreement." Exhibit 17 of Trustee's Supplemental Record. Pursuant to this agreement, the C. Georges, who had purportedly taken possession of all of Debtor's inventory, equipment, and general intangibles because of Debtor's alleged default on its loans to the C. Georges and Bank (which loan C. Georges

had guaranteed), sold Debtor's assets to Nanotek for $210,000. Nanotek also agreed to assume the remaining obligations owed by Debtor to the Bank, amounting to $67,115.22, a MasterCard account with a balance of $10,000, and the remaining balance on the loan from C. Georges in the amount of $132,884.78. Nanotek granted the C. Georges a security interest in the equipment, furniture, fixtures, inventory, supplies, customer lists, trade names, and goodwill to secure payment of the purchase price. Trustee and all Defendants agree the C. Georges never took actual physical possession of the property allegedly conveyed to Nanotek.

On December 1, 1995, Debtor and Bank entered into an Assumption Agreement whereby the Bank agreed to the transfer of these assets from Debtor to Nanotek, in exchange for Nanotek assuming and agreeing to pay the loan, and backed by the continuing personal guaranty of the C. Georges. Exhibit 18 of Trustee's Supplemental Record. One year later, on December 30, 1996, Joseph C. George paid off the balance remaining on the note to Bank, which the C. Georges had guaranteed. Exhibit 19 of Trustee's Supplemental Record. The Bank reassigned the deeds of trust to the C. Georges. Exhibits 20-24 of Trustee's Supplemental Record.

After the alleged transfer of Debtor's assets to Nanotek, the new company commenced a similar business, utilizing the assets, at the same business premises formerly used by Debtor.

On May 23, 1996, several of its creditors commenced an involuntary Chapter 7 case against Debtor. Exhibit 1 of Trustee's Supplemental Record. On June 20, 1996, the Court entered an order for relief on the involuntary petition. Plaintiff was thereafter appointed Chapter 7 trustee.

Trustee's complaint named several additional parties as defendants. All claims, save those asserted against these remaining Defendants (the C. Georges, the D. Georges and Nanotek), have been dismissed by stipulation of the parties.

Trustee asserts Defendants have received preferential transfers which are avoidable under Section 547 of the Bankruptcy Code. Additionally, Trustee asserts Defendant Nanotek is guilty of conversion of Debtors' assets, and has received fraudulent conveyances avoidable under Sections 544, 548(a)(2), and Idaho Code §§ 55-901 *et seq.* Defendants seek entry of summary judgment in their favor on what all parties agree are the remaining outstanding claims asserted in Trustee's Complaint (Counts V, VII, VIII, IX, X, XI, and XII).

III. Applicable Law

Summary judgment is only appropriate if, after viewing the evidence in the light most favorable to the non-moving party, there are no genuine issues of material fact remaining and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56; Fed. R. Bankr. P. 7056; *Anguiano v. Allstate Insurance Company*, 209 F.3d 1167, 1169 (9th Cir. 2000); *Newman v. American Airlines, Inc.*, 176 F.3d 1128, 1130 (9th Cir. 1999). Additionally, if the non-moving party bears the ultimate burden of proof on an element at trial, that party must make a showing sufficient to establish the existence of that element in order to survive a motion for summary judgment. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986); *Nissan Fire & Marine Ins. Co., Ltd. v. Fritz Companies, Inc.*, 210 F.3d 1099, 1102 (9th Cir. 2000).

Section 547(b) of the Bankruptcy Code allows the trustee in bankruptcy to avoid any transfer of an interest of the debtor in property if the transfer was:

> (1) to or for the benefit of a creditor;
> (2) for or on account of an antecedent debt owed by the debtor before such transfer was made;
> (3) made while the debtor was insolvent;
> (4) made–
> (A) on or within 90 days before the date of the filing of the petition; or

> (B) between ninety days and one year before the date of the filing of the petition, if such creditor at the time of such transfer was an insider; and
> (5) that enables such creditor to receive more than such creditor would receive if–
> (A) the case were a case under chapter 7 of this title;
> (B) the transfer had not been made; and
> (C) such creditor received payment of such debt to the extent provided by the provisions of this title.

11 U.S.C. § 547(b).

Trustee bears the ultimate burden of proof regarding the avoidability of any alleged preferential transfer, 11 U.S.C. § 547(g); *Wind Power Systems, Inc. v. Cannon Financial Group, Inc. (In re Wind Power Systems, Inc.)*, 841 F.2d 288, 291 (9th Cir. 1988), by a preponderance of the evidence. *Lee v. Hall-Mark Electronics Corp. v. Sims (In re Lee),* 179 B.R. 149, 155 (9th Cir. B.A.P. 1995) (citing *In re Bullion Reserve of North America*, 836 F.2d 1214, 1217 (9th Cir. 1988)). Therefore, Trustee must demonstrate that a genuine issue of material fact exists as to each element of his Section 547 preference avoidance action to prevail here. *Celotex*, 477 U.S. at 322-23.

IV. Preference Avoidance Against The D. Georges (Count V)

In Count V of the Complaint, Trustee alleges that within one year prior to the filing of the involuntary petition, payments were made by Debtor to the Ball Trust, which payments benefitted the D. Georges, and which constitute

avoidable preferences under Section 547(b). Count V incorporates several allegations in Count IV which originally sought to recover the payments from the Ball Trust. In their motion for summary judgment and supporting papers, the D. Georges assert Trustee has failed to produce any competent evidence that any of the subject transfers were ever made at all. Additionally, they argue that if any payments were in fact made by Debtor to the Ball Trust, the payments did not benefit the D. Georges, because all of Debtor's assets were subject to a security interest in favor of the Ball Trust. Because all Debtor's assets were fully encumbered, the D. Georges argue, Debtors' unsecured creditors were not prejudiced by any payment to the Ball Trust, and no avoidable preference occurred.

Aside from the allegations in his Complaint, which are repeated in Trustee's Affidavit, Trustee has not produced any evidence that any payments were made to the Ball Trust whatsoever. On the other hand, the D. Georges have introduced affidavits contradicting Trustee's allegations. In his affidavit dated September 13, 1999, Allen Ball indicates no payments were ever made by Debtor to the Ball Trust. Affidavit of Allen Ball, ¶ 6. This fact is corroborated by Joseph D. George in his affidavit dated September 20, 1999. Affidavit of Joseph D. George, ¶ 6. Joseph D. George, the Debtor's president at the time, asserts that as of April 19, 1995, all of Debtor's assets were fully encumbered in favor of

the Ball Trust via the promissory note and security agreement in the amount of $480,000 of the same date. *Id.* at ¶ ¶ 7-8.

In his response to the motion, Trustee does not deny the existence of the April 19 promissory note and security agreement. Instead, Trustee asserts the Ball Trust had "waived" its security interest in Debtor's assets in exchange for shares of stock in the new corporation, Nanotek. This assertion is not corroborated by any documentary evidence, but is confirmed in the Affidavit of Brian Taylor, ¶ 45, dated October 6, 1999. However, Defendants ask that Taylor's affidavit be stricken, arguing that the statements made in the affidavit were not based upon personal knowledge, and concerned events which occurred after Taylor's termination as an employee of Debtor.

While Defendants' arguments are somewhat convoluted, they have merit. Affidavits which are not based upon personal knowledge cannot raise a genuine issue of material fact sufficient to withstand a motion for summary judgment. *Skillsky v. Lucky Stores, Inc.*, 893 F.2d 1088, 1091 (9th Cir. 1990); *Grzybowski v. Aquaslide 'n' Dive Corp. (In re Aquaslide 'n' Dive Corp.)*, 85 B.R. 545, 548 (9th Cir. B.A.P. 1987). The Court is not inclined to strike the Taylor affidavit in its entirety, because some of the statements in this affidavit pertain to events which would, apparently, have occurred during his employment. However, there is nothing in the record to indicate Taylor would have knowledge

regarding incidents which occurred after his termination. As a result, his statements concerning any arrangement by the Ball Trust to supposedly waive its security interest for stock in the new company are insufficient to raise a genuine issue of material fact as to whether all of Debtor's assets were encumbered as security for the promissory note in favor of the Ball Trust. This is especially true in the face of two contradictory affidavits from persons who would seem to have personal knowledge of the facts, and in the absence of any documentary evidence demonstrating such waiver and/or transfer of shares of stock occurred.

After a review of the voluminous record submitted by Trustee, no evidence can be found to show that Debtor actually paid anything to the Ball Trust, let alone how much or when. This is true even though the Court has previously granted Trustee's Motion for Turnover of Books and Records on March 20, 1997, which included "[a]ny and all books, records, check registers, deposit slips, bank statements, income statements, balance sheets, reconciliation statements and accounting information for three (3) years preceding the filing of the Chapter 7 proceeding." Exhibit 31, p. 2, of Trustee's Supplemental Record. Trustee has had ample opportunity to discover and set forth evidence concerning Debtor's alleged payments made to the Ball Trust and the alleged waiver of the Ball Trust's security agreement.

Without evidence of such transfers or a waiver, the Court is left with the proposition that "[p]re-petition payments to a fully secured creditor generally 'will not be considered preferential because the creditor would not receive more than in a chapter 7 liquidation.'" *Committee of Creditors Holding Unsecured Claims v. Koch Oil Co. (In re Powerine Oil Co.)*, 59 F.3d 969, 972 (9th Cir. 1995) (quoting 4 *Collier on Bankruptcy*, ¶ 547.08, at 547-47 (15th ed. 1995)). Therefore, even if there had been transfers to the Ball Trust, Trustee has not shown that the D. Georges received more than they would have received had a Chapter 7 been initiated in the year prior to bankruptcy, or that Debtor had assets in excess of $480,000 which would be available for distribution to unsecured creditors. 11 U.S.C. § 547(b)(5). In other words, Trustee cannot show from the record any evidence of a critical element of his preference claims.

Trustee has also not shown how the alleged transfers by Debtors to the Ball Trust, if they in fact existed, benefitted the D. Georges. According to Debtor's bankruptcy schedules, the D. Georges held substantial unsecured claims against Debtor. Yet Trustee makes no attempt to explain how alleged transfers to the Ball Trust would benefit the D. Georges at all, let alone "on account of an antecedent debt."

For all of these reasons, it appears the D. Georges are entitled to summary judgment on Count V of Trustee's Complaint.

V. Preference Avoidance Against the C. Georges (Count VII)

A. Payments to Bank

Trustee alleges that payments were made by Debtor on the Bank's loan account during the year preceding the filing of the involuntary Chapter 7 petition against Debtor. Trustee alleges these payments constitute avoidable preferential transfers for the benefit of the C. Georges because they had personally guaranteed the Bank's loan.

Trustee devotes a considerable portion of his brief arguing that because the C. Georges were guarantors of the Bank's loan, any payments made by Debtor benefitted the C. Georges as creditors because their exposure as guarantors was reduced accordingly. While this proposition is correct as far as it goes, *see Loo v. Martinson (In re Skywalkers, Inc.),* 49 F.3d 546, 548 (9th Cir. 1994), there is a fundamental flaw in Trustee's argument. Trustee failed to show that any payments were made to Bank at all, let alone during the one-year insider preference period.[3]

[3] Trustee did not plead facts to support that the C. Georges were "insiders" of the Debtor, as defined by Section 101(31) of the Bankruptcy Code,

The C. Georges dispute that any payments were ever made by Debtor to reduce this liability and contend Trustee has not presented any proof to contradict their assertion. Additionally, like the D. Georges, the C. Georges argue that because all the Debtor's assets were encumbered by the Bank's security interest, the Ball Trust, and others, any alleged payments would not have depleted the pool of funds which would otherwise be available in a hypothetical liquidation for Debtor's unsecured creditors.

As discussed above, the only "evidence" Trustee has shown to contradict this assertion is found in the Affidavit of Brian Taylor. Because this affidavit does not purport to be based upon personal knowledge and no facts within it would allow the Court to infer such personal knowledge, this affidavit is insufficient to raise a genuine issue of material fact. The C. Georges are entitled to summary judgment on this claim.

B. Accounts Receivable of Debtor

Trustee also alleges that hundreds of thousands of dollars were received by Nanotek between July 1995 and December 1998, representing

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therefore allowing Trustee to use a one year reach-back period for preferences, instead of 90 days. *See* 11 U.S.C. § 547(b)(4)(B). However, as recited above, the C. Georges are the parents of Joseph D. George, Debtor's President, and do not deny they are insiders. *See* 11 U.S.C. § 101(31)(B)(vi) ("insider" includes a relative of a corporation's officer).

proceeds paid on the contracts rightfully owned by Debtor, which payments benefitted the C. Georges. While these alleged transfers might have benefitted the C. Georges as the owners/shareholders of Nanotek, Trustee has not alleged that any of these payments benefitted them as creditors. In other words, Trustee has not demonstrated that the payments to Nanotek were "on account of an antecedent debt" owed to the C. Georges by Debtors.

Again, Trustee has not met the requirements of Section 547(b). Under Idaho law, a corporation is a distinct and separate legal entity. *Jordan v. Hunter*, 865 P.2d 990, 996 n. 5 (Idaho Ct. App. 1993); *Alpine Packing Company v. H.H. Keim Company, Ltd.,* 828 P.2d 325, 326 (Idaho Ct. App. 1991). While the Court may disregard an otherwise valid corporate structure, or "pierce the corporate veil," in certain limited instances,[4] Trustee's Complaint does not plead such a request. Therefore, without evidence that the alleged transfers of Debtor's contract payments to Nanotek were made "on account of an antecedent debt," Trustee has not met his burden to show the existence of a genuine issue

[4] Two requirements to pierce the corporate veil are "(1) that there be such a unity of interest and ownership that the separate personalities of the corporation and the individual no longer exist and (2), that if the acts are treated as those of the corporation an inequitable result will follow." *Alpine Packing Company v. H.H. Keim Company, Ltd.*, 828 P.2d 325, 326 (Idaho Ct. App. 1991). *See also Hutchison v. Anderson*, 950 P.2d 1275, 1279-80 (Idaho Ct. App. 1997).

of material fact and the C. Georges are also entitled to summary judgment on this preference claim.

C. Buy-Sell Agreement

Trustee also argues that via the Buy Sell Agreement of November 9, 1995, the C. Georges received avoidable preferences. Recall, the C. Georges purportedly "took possession" of Debtor's equipment, inventory, and general intangibles, due to Debtor's default on a secured promissory note to the C. Georges, and because Debtor had defaulted on the note to Bank which the C. Georges had guaranteed. The C. Georges then allegedly "sold" these assets to Nanotek for $210,000.

Under the Code, "'transfer' means every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with property or with an interest in property . . . ." 11 U.S.C. § 101(54). This broad definition could conceivably include the involuntary transfer of Debtor's assets to the C. Georges. Additionally, the C. Georges purportedly took possession of these assets in their status as creditors of the Debtor "on account of an antecedent debt."

In response, however, the C. Georges argue the Buy Sell Agreement is a legal nullity, and they never acquired any rights in the Debtor's property that they purportedly conveyed to Nanotek. They argue the assets

described in the Buy Sell Agreement (equipment, inventory, and general intangibles) were collateral for the Bank to secure the December 6, 1991 loan, as well as to others holding prior security agreements.

Reviewing the documents, however, reveals that only Debtor's equipment and inventory were used as collateral for Bank's loan, and that no other security agreements covering Debtor's assets in favor of other creditors have been made part of the record. Additionally, the security agreement between Debtor and the C. Georges upon which the C. Georges relied to "take possession" of Debtors assets is not part of the record.

On this record, the Court is unable to determine, as a matter of law, whether a valid transfer occurred from Debtor to the C. Georges, or thereafter from the C. Georges to Nanotek. The Court also cannot determine whether, if the transfers occurred, they enabled C. Georges to receive more than they would have in a hypothetical Chapter 7. Because genuine issues of material fact remain, these claims must await trial, and the motions for summary judgment will be denied on this issue.

VI. Preference Avoidance Against Nanotek (Count VIII)

Nanotek is also entitled to summary judgment regarding Trustee's allegations that it received preferential transfers. Trustee has neither alleged

nor produced evidence tending to prove the first element of Section 547(b), that the transfer be "to or for the benefit of a creditor." 11 U.S.C. § 547(b)(1). Despite Nanotek's argument that it was never a creditor of Debtor and the fact that Nanotek does not appear as a creditor on any of Debtor's schedules, Trustee has done nothing to raise a genuine issue of material fact on this element. While transfers of assets and accounts receivable from Debtor to Nanotek could, arguably, trigger scrutiny as potential fraudulent conveyances, without evidence that Nanotek was a creditor of Debtor, as a matter of law, avoidance under Section 547(b) is simply unavailable.[5] Therefore, Nanotek is entitled to summary judgment regarding Count VIII of Trustee's Complaint.

VII. Conversion and Fraudulent Conveyance Against Nanotek (Counts IX, X, XI, XII)

Finally, at hearing, counsel for Nanotek conceded there were genuine issues of material fact regarding the remaining claims in Trustee's Complaint against Nanotek. The Court agrees. Therefore, summary judgment will be denied on Counts IX (conversion), X (fraudulent conveyance under

[5] In addition to the failure to show that Nanotek was a creditor of the Debtor, Trustee has not shown, nor does the Court see how he could show, that Nanotek was an "insider" of the Debtor under the definition in Section 101(31). Therefore, Trustee would not have had the benefit of the extended one-year preference period with respect to transfers to Nanotek.

Section 548), XI (fraudulent conveyance under Section 544 and I.C. § 55-901 *et seq*.), and XII (fraudulent conveyance under Section 544 and I.C. § 55-901 *et seq*.) of Trustee's Complaint.

VIII. Conclusion

Because Trustee has not shown the existence of a genuine issue of material fact regarding each element of a Section 547(b) avoidable preference, the D. Georges' Motion for Summary Judgment (Docket No. 15 of District Court Case No. CV-99-00474-E-BLW) regarding Count VII of Trustee's Complaint will be granted.

Similarly, the C. George's Motion for Summary Judgment (Docket No. 44 in this adversary proceeding file) will be granted regarding Count VII of Trustee's Complaint, except as to any transfers occurring under the C. Georges-Nanotek Buy Sell Agreement. Whether the transfers effected by the Buy Sell Agreement constitutes an avoidable preference pursuant to Section 547(b) presents genuine issues of material fact appropriate for trial. Therefore, summary judgment will be denied as to this issue.

Because Trustee has not shown that Nanotek was a creditor of Debtor, Nanotek's Motion for Summary Judgment (Docket No. 15 of District Court Case No. CV-99-00474-E-BLW) regarding Count VIII will be granted.

Finally, the Court finds genuine issues of material fact exist regarding Trustee's conversion and fraudulent conveyance claims against Nanotek. Therefore, Nanotek's motion for summary judgment concerning Counts IX, X, XI, and XII of Trustee's Complaint will be denied.

Subject to those portions of the affidavit discussed above, the C. Georges' Motion to Strike Affidavit of Brian Taylor (Docket No. 9 of District Court Case No. CV-99-00474-E-BLW) in its entirety will also be denied. A separate order will be entered by the Court.

DATED This 20th day of July, 2000.

_____
JIM D. PAPPAS
CHIEF U.S. BANKRUPTCY JUDGE

CERTIFICATE OF MAILING

I, the undersigned, hereby certify that I mailed a true copy of the document to which this certificate is attached, to the following named person(s) at the following address(es), on the date shown below:

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ADV. NO.: 98-6136

CAMERON S. BURKE, CLERK
U.S. BANKRUPTCY COURT

DATED:

By_____
Deputy Clerk